



Appendix N

Certification Violations

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Introduction

Only officials authorized by the Animal and Plant Health Inspection Service (APHIS) can make changes and corrections to APHIS certificates. Unauthorized changes are in violation of 7CFR 353 and may be prosecuted under 18 USC s1001 and other applicable laws. When a violation is found, the Port director (PD) should consider the circumstances surrounding the violation before proceeding to either of the following actions:

- ◆ Issue an official Warning, Violation of Federal Regulations (APHIS Form 7060, or
- ◆ Refer the case to Investigative and Enforcement Services (IES) for further action

The Port Director (PD) should determine the intent behind the violation and make the judgement to either officially warn the violator(s) or pursue prosecution. If the intent is not clear or ambiguous, PD's can use their IES counterparts to get a recommendation on which action to take. Generally, the Office of the General Counsel (OGC) will not pursue administrative prosecution of cases that lack clear significance. Only cases that are repeat violations or have the appearance of an attempt to deceive or commit fraud should be referred to IES investigators for further action. IES in turn will determine if an investigation will be forwarded to the Office of the Inspector General (OIG) for criminal prosecution. PD's should use discretionary judgement when determining which cases require further action. If further action results in a conviction against an exporter or agent, the outcome may lead to a civil penalty or a criminal penalty.

APHIS Form 7060 should be issued when the violation does not warrant further action. If Form 7060 is issued, then no further action may be taken on this incident by IES. The following are some

examples of violations where APHIS Form 7060 may be used instead of pursuing an investigation. None of the following apply if the exporter is apparently seeking certification of an un-inspected shipment:

- ◆ Correction to the name of the exporter or importer
- ◆ Decrease in the quantity of declared produce
- ◆ Correction or deletion of botanical names
- ◆ Correction of errors in the number (generally only decreases), descriptions, or distinguishing marks
- ◆ Correction of the means of conveyance
- ◆ Addition of a letter of credit or other commercial reference to the document

These violations are prohibited practices and can result in a foreign government rejecting a certification and therefore rejecting the shipment. As first time violations these prohibited practices should not warrant a criminal investigation unless an attempt to defraud is apparent. Other first time violations may also require a criminal investigation. However, as first time violations, these violations would warrant APHIS Form 7060. Ports should use APHIS Form 7060 to inform the exporter or agent of the violation and advise them of the correct procedure to follow for making changes to a phytosanitary certificate. Also, the exporter or agent should be informed of the consequences of failing to follow procedures.

Preparation of APHIS Form 7060

To clarify the preparation of the APHIS Form 7060, the form is divided into three basic parts:

- ◆ Heading
- ◆ Description of Violation
- ◆ Identification of Authorized Official

The following give specific instructions, techniques, and examples on how to complete APHIS Form 7060 (see [Figure N-1-1](#) for a sample of this form).

Heading

Block Titled "CASE NO.":

Leave blank for IES use.

Block Titled "VIOLATOR":

Enter name and/or company name.

Block Titled "ADDRESS":

Enter the address of the violator.

Description of Violation

Fill in the date of the violation.

Write a brief description of the violation. For example:

EXAMPLE: Any changes to an APHIS certificate must be made by the authorized officer. Unauthorized changes are in violation of 7CFR Part 353 and may be prosecuted under 18 USC s1001 and/or other applicable laws.

Identification of Authorized Official

Block Titled "APHIS OFFICIAL":

Enter the name and title of the authorized official that is issuing APHIS Form 7060.

Block Titled "OFFICE ADDRESS":

Enter the authorized official's office address and telephone number.

Block Titled "SIGNATURE":

Signature of the authorized official that is issuing APHIS Form 7060.

Block Titled "DATE ISSUED":

Enter the date APHIS Form 7060 was issued.

Block Titled "FOR PERSONAL SERVICE BY":

Enter the name and signature of the violator's receiving official (violator entry).

Block Titled "DATE RECEIVED":

Enter date APHIS Form 7060 is received by the violator (violator entry).

Block Titled "FOR CERTIFIED MAIL RECEIPT NO.":

Enter the certified mail receipt number for APHIS Form 7060.

